

EXHIBIT
98th

OLL 83-2204

12 September 1983

MEMORANDUM FOR: Associate Deputy Director for Administration
Chief, Logistics & Procurement Law Division/OGC

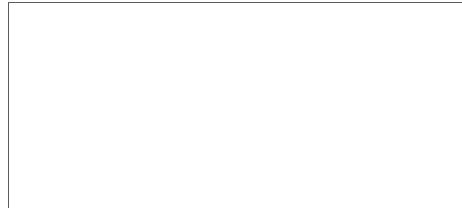
FROM:

Office of Legislative Liaison

SUBJECT:

S. 1001 - OFPP Reauthorization

Attached for your review and comment is a bill (S. 1001) to reauthorize and expand the functions of the Office of Federal Procurement Policy. As amended in Committee, this bill would empower the Administrator of OFPP to promulgate government-wide procurement policy, regulations and procedure. I would appreciate your views on how this bill could impact Agency procurement activities.



Attachment

cc:

OLL

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 - Signer
- (12 Sept 83)

File: Procurement

LEGISLATIVE ANALYSIS

Bill No. S. 1001 Report No. _____ Companion No. _____

Introduced By: _____ Date: 7 April 83

Referred to: Gov't Affairs

Contacts: _____

Hearings/Mark-up: _____

Conclusion:

☐ No Agency objection

☒ Monitor

☒ Distribute for comment

☐ Agency objection and/or
needs amendment

Analysis:

Empowers the Administrator of OFDP to promulgate
government-wide procurement policy ^(regulations and procedures) and to
ensure that individual agency regulations are
in compliance with such policy.

Dist. _____

ADDA

C/L+PLD/OGC

Passage _____ House _____ Senate _____

Calendar No. 331

98TH CONGRESS
1ST SESSION

S. 1001

To authorize appropriations for the Office of Federal Procurement Policy for an additional five fiscal years.

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, APRIL 5), 1983

Mr. COHEN (for himself and Mr. ROTH) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

AUGUST 1, 1983

Reported by Mr. COHEN, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To authorize appropriations for the Office of Federal Procurement Policy for an additional five fiscal years.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That the first sentence of section 11 of the Office of Federal~~
4 ~~Procurement Policy Act (41 U.S.C. 410) is amended by~~
5 ~~striking out "three succeeding fiscal years" and inserting in~~
6 ~~lieu thereof "eight succeeding fiscal years".~~

1 *That this Act may be cited as the "Office of Federal Procure-*
2 *ment Policy Act Amendments of 1983".*

3 *REFERENCE*

4 *SEC. 2. Except as otherwise specifically provided,*
5 *whenever in this Act a reference is expressed in terms of a*
6 *section or other provision, the reference shall be considered to*
7 *be made to a section or other provision, respectively, of the*
8 *Office of Federal Procurement Policy Act (41 U.S.C. 401 et*
9 *seq.).*

10 *DECLARATION OF POLICY*

11 *SEC. 3. Section 2 (41 U.S.C. 401) is amended to read*
12 *as follows:*

13 *"DECLARATION OF POLICY*

14 *"SEC. 2. It is the policy of the Congress to promote*
15 *economy, efficiency and effectiveness in the procurement of*
16 *property and services by the executive branch of the Federal*
17 *Government by—*

18 *"(1) promoting effective competition;*

19 *"(2) establishing policies, procedures, and prac-*
20 *tices which will provide the Government with property*
21 *and services of the requisite quality, within the time*
22 *needed, at the lowest reasonable cost;*

23 *"(3) promoting the development of simplified uni-*
24 *form procurement processes;*

1 “(4) *promoting the participation of small business*
2 *concerns;*

3 “(5) supporting the continuing development of a
4 competent, professional work force;

5 “(6) eliminating fraud and waste in the procure-
6 ment process;

7 “(7) eliminating redundant administrative re-
8 quirements placed on contractor and Federal procure-
9 ment officials;

10 “(8) *promoting fair dealings and equitable rela-*
11 *tionships with the private sector;*

12 “(9) ensuring that payment is made in a timely
13 manner and only for value received;

14 “(10) requiring, to the extent practicable, the use
15 of commercial products to meet the Government’s
16 needs;

17 “(11) requiring that personal services are ob-
18 tained in accordance with applicable personnel proce-
19 dures and not by contract; and

20 “(12) ensuring the development of procurement
21 policies that will accommodate emergencies and war-
22 time as well as peacetime requirements.”.

23 *DEFINITIONS*

24 *SEC. 4. Section 4 (41 U.S.C. 403) is amended to read*
25 *as follows:*

1 “DEFINITIONS

2 “SEC. 3. *As used in this Act—*

3 “(1) *the term ‘executive agency’ means—*

4 “(A) *an executive department specified in*
5 *section 101 of title 5, United States Code;*

6 “(B) *a military department specified in sec-*
7 *tion 102 of such title;*

8 “(C) *an independent establishment as de-*
9 *finied in section 104(1) of such title; and*

10 “(D) *a wholly owned Government corpora-*
11 *tion fully subject to the provisions of chapter 91 of*
12 *title 31, United States Code;*

13 “(2) *the term ‘procurement’ includes all stages of*
14 *the process of acquiring property or services, beginning*
15 *with how the need for such property or services is de-*
16 *scribed by an executive agency and ending with con-*
17 *tract completion and closeout;*

18 “(3) *the term ‘procurement system’ means the in-*
19 *tegration of the procurement process, the professional*
20 *development of procurement personnel, and the man-*
21 *agement structure for carrying out the procurement*
22 *function;*

23 “(4) *the term ‘single system of Government-wide*
24 *procurement regulations’ means (A) a single Govern-*
25 *ment-wide procurement regulation to be issued jointly*

1 *by the General Services Administration, the Depart-*
2 *ment of Defense, and the National Aeronautics and*
3 *Space Administration, pursuant to their respective au-*
4 *thorities, title III of the Federal Property and Admin-*
5 *istrative Services Act of 1949 (41 U.S.C. 251 et seq.),*
6 *chapter 137 of title 10, United States Code, and the*
7 *National Aeronautics and Space Act of 1958 (42*
8 *U.S.C. 2451 et seq.), and (B) agency acquisition reg-*
9 *ulations implementing and supplementing the Govern-*
10 *ment-wide procurement regulation issued as provided*
11 *in clause (A), which shall be limited to (i) regulations*
12 *essential to implement Government-wide policies and*
13 *procedures within the agency and (ii) additional poli-*
14 *cies and procedures required to satisfy the specific and*
15 *unique needs of the agency; and*

16 *“(5) the term ‘standards’ means the criteria for*
17 *determining the effectiveness of the procurement system*
18 *by measuring the performance of the various elements*
19 *of such system.”.*

20 **AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR**

21 *SEC. 5. Section 6 (41 U.S.C. 405) is amended to read*
22 *as follows:*

23 **“AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR**

24 **“SEC. 6. (a) The Administrator shall provide overall**
25 *direction of procurement policy and leadership in the develop-*

1 *ment of procurement systems of the executive agencies. To the*
2 *extent that the Administrator considers appropriate, and with*
3 *due regard to applicable laws and the program activities of*
4 *the executive agencies, the Administrator may prescribe Gov-*
5 *ernment-wide policies, regulations, procedures, and forms*
6 *which shall be followed by executive agencies in the procure-*
7 *ment of—*

8 “(1) *property other than real property in being;*

9 “(2) *services, including research and development;*

10 *and*

11 “(3) *construction, alteration, repair, or mainte-*
12 *nance of real property.*

13 “(b) *The authority of the Administrator under this Act*
14 *shall not be construed to—*

15 “(1) *impair or interfere with the determination by*
16 *executive agencies of their need for, or their use of, spe-*
17 *cific property, services, or construction, including par-*
18 *ticular specifications therefor; or*

19 “(2) *interfere with the determination by executive*
20 *agencies of specific actions in the award or administra-*
21 *tion of procurement contracts.*

22 “(c) *The functions of the Administrator shall include—*

23 “(1) *providing leadership and resolving differ-*
24 *ences among the executive agencies in the establish-*
25 *ment, development and maintenance of the single*

1 *system of simplified Government-wide procurement*
2 *regulations and in the development of simplified Gov-*
3 *ernment-wide procurement procedures and forms;*

4 *“(2) coordinating the development of Government-*
5 *wide procurement system standards that shall be imple-*
6 *mented by the executive agencies in their procurement*
7 *systems;*

8 *“(3) providing leadership and coordination in the*
9 *formulation of the executive branch position on legisla-*
10 *tion relating to procurement;*

11 *“(4) providing for a computer-based Federal Pro-*
12 *curement Data System which shall be located in the*
13 *General Services Administration (acting as executive*
14 *agent for the Administrator) and shall collect, develop,*
15 *and disseminate procurement data;*

16 *“(5) providing for a Federal Acquisition Institute*
17 *which shall be located in the General Services Admin-*
18 *istration (acting as executive agent for the Administra-*
19 *tor) and shall—*

20 *“(A) foster and promote Government-wide*
21 *career management programs for a professional*
22 *procurement work force; and*

23 *“(B) promote and coordinate Government-*
24 *wide research and studies to improve the procure-*
25 *ment process and the laws, policies, methods, reg-*

1 *ulations, procedures, and forms relating to pro-*
2 *curement by the executive agencies;*

3 *“(6) establishing criteria and procedures to ensure*
4 *the effective and timely solicitation of the viewpoints of*
5 *interested parties in the development of procurement*
6 *policies, regulations, procedures, and forms;*

7 *“(7) developing standard contract forms and con-*
8 *tract language in order to reduce the Government’s cost*
9 *of procuring property and services and the private sec-*
10 *tor’s cost of doing business with the Government; and*

11 *“(8) completing action, as appropriate, on the rec-*
12 *ommendations of the Commission on Government Pro-*
13 *curement.*

14 *“(d) In carrying out the functions set forth in subsection*
15 *(c), the Administrator—*

16 *“(1) shall consult with the affected executive*
17 *agencies, including the Small Business Administra-*
18 *tion;*

19 *“(2) may, with the concurrence of the heads of af-*
20 *ected executive agencies, designate an executive agency*
21 *or executive agencies to assist in the performance of*
22 *such functions; and*

23 *“(3) may establish advisory committees or other*
24 *interagency groups to assist in providing for the estab-*
25 *lishment, development, and maintenance of a single*

1 *system of simplified Government-wide procurement*
2 *regulations and to assist in the performance of any of*
3 *the other functions which the Administrator considers*
4 *appropriate.*

5 “(e) *The Administrator may, with the concurrence of*
6 *the Director of the Office of Management and Budget, deny*
7 *the promulgation of or rescind any final rule or regulation of*
8 *any executive agency relating to procurement if the Adminis-*
9 *trator determines that such rule or regulation is inconsistent*
10 *with the policies set forth in section 2 or any policies, regula-*
11 *tions, or procedures issued pursuant to subsection (a).*

12 “(f) *Except as otherwise provided by law, no duties,*
13 *functions, or responsibilities, other than those expressly as-*
14 *signed by this Act, shall be assigned, delegated, or transferred*
15 *to the Administrator.*

16 “(g) *The authority of the Administrator under this Act*
17 *shall apply only to procurements payable from appropriated*
18 *funds.*

19 “(h) *Nothing in this Act shall be construed to—*

20 “(1) *impair or affect the authorities or responsi-*
21 *bilities conferred by the Federal Property and Admin-*
22 *istrative Services Act of 1949 with respect to the pro-*
23 *curement of automatic data processing and telecommu-*
24 *nications equipment and services or of real property; or*

1 “(2) *limit the current authorities and responsibil-*
2 *ities of the Director of the Office of Management and*
3 *Budget.*

4 “(i)(1) *With due regard to applicable laws and the pro-*
5 *gram activities of the executive agencies administering Fed-*
6 *eral programs of grants or assistance, the Administrator may*
7 *prescribe Government-wide policies, regulations, procedures,*
8 *and forms which the Administrator considers appropriate and*
9 *which shall be followed by such executive agencies in provid-*
10 *ing for the procurement, to the extent required under such*
11 *programs, of property or services referred to in clauses (1),*
12 *(2), and (3) of subsection (a) by recipients of Federal grants*
13 *or assistance under such programs.*

14 “(2) *Nothing in paragraph (1) shall be construed to—*

15 “(A) *permit the Administrator to authorize pro-*
16 *curement or supply support, either directly or indirect-*
17 *ly, to recipients of Federal grants or assistance; or*

18 “(B) *authorize any action by such recipients con-*
19 *trary to State and local laws, in the case of programs*
20 *to provide Federal grants or assistance to States and*
21 *political subdivisions.”.*

22 AUTHORIZATION OF APPROPRIATIONS

23 SEC. 6. *Section 11 (41 U.S.C. 410) is amended to*
24 *read as follows:*

1 **"AUTHORIZATION OF APPROPRIATIONS**

2 *"SEC. 11. There are authorized to be appropriated to*
3 *carry out the provisions of this Act, and for no other purpose,*
4 *\$5,000,000 for the fiscal year ending September 30, 1984,*
5 *and for each of the four succeeding fiscal years."*

6 **EXPERIMENTAL PROGRAMS; ADDITIONAL PROCUREMENT**
7 **RESPONSIBILITIES OF EXECUTIVE AGENCIES**

8 *SEC. 7. The Office of Federal Procurement Policy Act*
9 *is further amended by adding at the end thereof the following*
10 *new sections:*

11 **"TESTS OF INNOVATIVE PROCUREMENT METHODS AND**
12 **PROCEDURES**

13 *"SEC. 15. (a) The Administrator may develop innova-*
14 *tive procurement methods and procedures to be tested by se-*
15 *lected executive agencies. The innovative procurement meth-*
16 *ods and procedures tested under this subsection shall be con-*
17 *sistent with the policies set forth in section 2. In developing*
18 *any program to test innovative procurement methods and pro-*
19 *cedures under this subsection, the Administrator shall consult*
20 *with the heads of executive agencies to—*

21 *"(1) ascertain the need for and specify the objec-*
22 *tives of such program;*

23 *"(2) develop the guidelines and procedures for*
24 *carrying out such program and the criteria to be used*
25 *in measuring the success of such program;*

1 “(3) evaluate the potential costs and benefits
2 which may be derived from the innovative procurement
3 methods and procedures tested under such program;

4 “(4) select the appropriate executive agencies or
5 components of executive agencies to carry out such
6 program;

7 “(5) specify the categories and types of products
8 or services to be procured under such program; and

9 “(6) develop the methods to be used to analyze the
10 results of such program.

11 A program to test innovative procurement methods and proce-
12 dures may not be carried out unless approved by the heads of
13 the executive agencies selected to carry out such program.

14 “(b) If the Administrator determines that it is necessary
15 to waive the application of any provision of law in order to
16 carry out a proposed program to test innovative procurement
17 methods and procedures under subsection (a), the Adminis-
18 trator shall transmit notice of the proposed program to the
19 Committee on Government Operations of the House of Rep-
20 resentatives and the Committee on Governmental Affairs of
21 the Senate and request that such committees take such action
22 as may be necessary to provide that such provision of law
23 does not apply with respect to the proposed program. The
24 notification to Congress shall include a description of the pro-
25 posed program (including the scope and purpose of the pro-

1 posed program), the procedures to be followed in carrying out
2 the proposed program, the provisions of law affected and any
3 provision of law the application of which must be waived in
4 order to carry out the proposed program, and the executive
5 agencies involved in carrying out the proposed program.

6 "EXECUTIVE AGENCY RESPONSIBILITIES

7 "SEC. 16. (a) To further achieve effective, efficient, and
8 economic administration of the Federal procurement system,
9 the head of each executive agency shall, in accordance with
10 all laws, Government-wide policies and regulations, and good
11 business practices—

12 "(1) increase the use of effective competition in
13 procurement by the executive agency;

14 "(2) establish clear lines of authority, account-
15 ability, and responsibility for procurement decision-
16 making within the executive agency, including placing
17 the procurement function at a sufficiently high level in
18 the executive agency to provide—

19 "(A) direct access to the head of the major
20 organizational element of the executive agency
21 served; and

22 "(B) comparative equality with organization-
23 al counterparts;

24 "(3) designate a procurement executive who shall
25 be responsible for management direction of the procure-

1 *ment system of the executive agency, including imple-*
2 *mentation of the unique procurement policies, regula-*
3 *tions, and standards of the executive agency; and*

4 *“(4) develop and maintain a procurement career*
5 *management program in the executive agency to assure*
6 *an adequate professional work force.*

7 *“(b) The head of an executive agency designated by the*
8 *Administrator to participate in an interagency group estab-*
9 *lished under section 6(d)(3) shall, to the extent practicable,*
10 *participate in such interagency group.*

11 *“STUDIES AND REPORTS*

12 *“SEC. 17. (a) The Administrator shall conduct studies*
13 *and issue reports on—*

14 *“(1) the feasibility and advisability of promulgat-*
15 *ing Government-wide regulations applicable to suspen-*
16 *sions and debarments of recipients of Federal financial*
17 *assistance; and*

18 *“(2) the extent of competition in the award of sub-*
19 *contracts by Federal prime contractors including (A)*
20 *an evaluation of the data available on subcontracts*
21 *awarded in fiscal 1982 with respect to (i) the source*
22 *selection method used in awarding such subcontracts,*
23 *(ii) the type of subcontracts awarded, (iii) the dollar*
24 *value of such subcontracts, (iv) the size of the subcon-*
25 *tractors which were awarded the subcontract (by*

1 *number of employees), and (v) the geographical loca-*
2 *tion of such subcontractors, and (B) the report shall*
3 *also include recommendations for improvements, if ap-*
4 *propriate, in the extent of competition in the awarding*
5 *of subcontracts and in the collection of data on such*
6 *subcontract awards.*

7 *“(b) All reports required under subsection (a) of this*
8 *section shall be completed by April 1, 1984, and shall be*
9 *submitted to the Committee on Governmental Affairs of the*
10 *Senate and the Committee on Government Operations of the*
11 *House of Representatives not later than April 15, 1984.”.*

12 *MISCELLANEOUS AMENDMENTS*

13 *SEC. 8. (a) Section 8 (41 U.S.C. 407) is amended—*
14 *(1) in subsection (a)—*

15 *(A) by striking out “(1)” at the beginning of*
16 *paragraph (1); and*

17 *(B) by striking out paragraphs (2), (3), and*
18 *(4);*

19 *(2) in subsection (b)—*

20 *(A) by striking out the first sentence and in-*
21 *serting in lieu thereof “At least 30 days prior to*
22 *the effective date of any major policy or regulation*
23 *prescribed under section 6(a), the Administrator*
24 *shall transmit to the Committee on Government*
25 *Operations of the House of Representatives and*

1 *the Committee on Governmental Affairs of the*
2 *Senate a report on the proposed policy or regula-*
3 *tion.”; and*

4 *(B) by inserting “or regulation” after*
5 *“policy” each place it appears in clauses (1), (2),*
6 *and (3) in the second sentence of such subsection;*
7 *and*

8 *(3) by striking out “any policy” in subsection (c)*
9 *and inserting in lieu thereof “any major policy or reg-*
10 *ulation”.*

11 *(b) Section 10 (41 U.S.C. 409) is amended to read as*
12 *follows:*

13 *“SEC. 10. Procurement policies, regulations, proce-*
14 *dures, or forms in effect on the date of enactment of the Office*
15 *of Federal Procurement Policy Act Amendments of 1983*
16 *shall continue in effect, as modified from time to time, until*
17 *repealed, amended, or superseded by policies, regulations,*
18 *procedures, or forms promulgated by the Administrator.”.*

19 *(c) Subsection (a) of section 12 (41 U.S.C. 411) is*
20 *amended to read as follows:*

21 *“(a) The Administrator may delegate, and authorize*
22 *successive redelegations of, any authority, function, or power*
23 *of the Administrator under this Act (other than the authority*
24 *to provide overall direction of Federal procurement policy*
25 *and to prescribe policies and regulations to carry out such*

1 *policy), to any other executive agency with the consent of the*
2 *head of such executive agency or at the direction of the Presi-*
3 *dent.”.*

4 *(d)(1) Sections 201(a)(1), 201(c), and 206(a)(4) of the*
5 *Federal Property and Administrative Services Act of 1949*
6 *(40 U.S.C. 481(a)(1), 481(c), 487(a)(4)) are each amended*
7 *by inserting “and regulations” after “subject to policy direc-*
8 *tives”.*

9 *(2) Section 602(c) of such Act (40 U.S.C. 474) is*
10 *amended by inserting “except as otherwise provided by the*
11 *Office of Federal Procurement Policy Act, and” after “any*
12 *law inconsistent herewith,”.*

Amend the title so as to read: “A bill to revise the authority and responsibility of the Office of Federal Procurement Policy, to authorize appropriations for the Office of Federal Procurement Policy for an additional five fiscal years, and for other purposes.”.

Calendar No. 331

98TH CONGRESS
1ST Session

S. 1001

A BILL

To authorize appropriations for the Office of Federal
Procurement Policy for an additional five fiscal years.

August 1, 1983

Reported with an amendment and an amendment to the title